

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VANCE C. ELLIOT,

Plaintiff,

vs.

THE SAN FRANCISCO BOARD OF
SUPERVISORS,

Defendant.

Case No: C 09-1397 SBA

**ORDER DISMISSING CASE
PURSUANT TO 28 U.S.C. § 1915(e)(2)**

The parties are presently before the Court on Defendant's Motion for Summary Judgment. [Docket No. 18]. Having read and considered the papers submitted for the present motion and those previously submitted in this case, the Court resolves the matter without oral argument and hereby DENIES the motion as MOOT and DISMISSES the action pursuant to 28 U.S.C. § 1915(e)(2).

I. BACKGROUND

Plaintiff filed the present action on March 24, 2009. He claims that a policy enacted by the City of San Francisco, the Uniform Visitor Policy, violates his constitutional rights under the Fourteenth Amendment. The essence of his complaint is that the Policy restricts his right to have visitors at times of his own choosing.

On August 31, 2009, Plaintiff filed the present Motion for Summary Judgment.

II. LEGAL STANDARD

Under 28 U.S.C. § 1915(e)(2), federal courts are authorized to review claims filed IFP prior to service and to dismiss the case at any time if the court determines that: (1) the allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) the action fails to state a claim; or (4) the action seeks monetary relief from a defendant who is immune from such relief. A pleading

1 filed by a pro se plaintiff must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d
2 696, 699 (9th Cir. 1990).

3 **III. DISCUSSION**

4 Here, the Court finds that Plaintiff's action is frivolous. On March 26, 2009, this Court
5 issued an Order and Final Judgment in case # 08-2352 SBA. In that case, Plaintiff brought forth an
6 identical claim against the San Francisco Rent Stabilization and Arbitration Board for a violation of
7 his constitutional rights under the 14th Amendment as a result of the same Uniform Visitor Policy.
8 The case was dismissed on a 12(b)(6) motion without leave to amend because Plaintiff lacked
9 standing within the meaning of Article III. The only difference between that case and the present
10 one is that in addition to the San Francisco Rent Stabilization and Arbitration Board, the Plaintiff
11 has added the San Francisco Board of Supervisors as a named Defendant.

12 There can be no argument that the present case is virtually identical to the previous case
13 adjudicated before this Court. At issue is the same claim, the alleged unconstitutionality of the San
14 Francisco Policy, and the same parties are involved with the exception of the addition of the San
15 Francisco Board of Supervisors. As such, the Court finds the present case frivolous. *See Cato v.*
16 *United States*, 70 F.3d 1103, 1105 n. 2 (9th Cir.1995) (no abuse of discretion in dismissing action
17 as frivolous under 28 U.S.C. § 1915 where complaint "merely repeats pending or previously
18 litigated claims").
19


20 **IV. CONCLUSION**

21 The Court DENIES the current motion for Summary Judgment as MOOT and DISMISSES
22 the action pursuant to 28 U.S.C. § 1915(e)(2).

23 The Clerk shall vacate all scheduled dates and deadlines and close the file.
24

25 SO ORDERED.
26

27 Dated: 9/16/09

28 
Hon. Sandra Brown Armstrong
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ELLIOTT et al,

5 Plaintiff,

6 v.

7 SAN FRANCISCO BOARD OF
8 SUPERVISORS et al,

9 Defendant.
10 _____/

Case Number: CV09-01397 SBA

11 **CERTIFICATE OF SERVICE**

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on September 17, 2009, I SERVED a true and correct copy(ies) of the attached, by placing
15 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
16 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
17 receptacle located in the Clerk's office.

18 Vance S. Elliott
19 74 Sixth Street, #226
20 San Francisco, CA 94103-1608

Dated: September 17, 2009

Richard W. Wieking, Clerk

By: LISA R CLARK, Deputy Clerk